

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SCOTCH ROAD TRUST, LLC, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
GF PRINCETON, LLC	:	NO. 11-7743

MEMORANDUM

Bartle, J.

June 21, 2012

Plaintiffs Scotch Road Trust, LLC ("Scotch Road") and Vantage Communications (USA), LLC ("Vantage")<sup>1</sup> bring this action against GF Princeton, LLC ("GF Princeton"). Plaintiffs seek a declaratory judgment and allege fraud in the inducement and breach of contract. Before the court is the motion of the defendant to dismiss all counts of the complaint for lack of personal jurisdiction under Rule 12(b)(2) of the Federal Rules of Civil Procedure. The court permitted discovery limited to this issue.

I.

When a defendant moves to dismiss a claim under Rule 12(b)(2), the plaintiffs bear the burden of showing that personal jurisdiction exists. See Marten v. Godwin, 499 F.3d 290, 295-96 (3d Cir. 2007). At this stage the plaintiffs must establish only

---

1. Vantage is the lease guarantor of Scotch Road. It is not clear which plaintiff brought each claim, but this is not significant for the purposes of this motion. We will therefore refer to Scotch Road and Vantage collectively as "plaintiffs."

"a prima facie case of personal jurisdiction" and are entitled to have their allegations taken as true and all factual disputes drawn in their favor. Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004). Nonetheless, the plaintiffs must allege "specific facts" rather than vague or conclusory assertions. Marten, 499 F.3d at 298.

II.

The following facts are undisputed or are viewed in the light most favorable to the plaintiffs. The defendant GF Princeton and the plaintiffs entered into a lease on or about February 20, 2009 for space in a commercial office building owned by GF Princeton in Mercer County, New Jersey.<sup>2</sup> The lease had an initial term of five years, six months commencing on April 1, 2009. The lease provided the plaintiffs with an option to terminate it "at any time following the first 30 months after the Commencement Date ('Early Termination Option') upon six months advance written notice advising Landlord of Tenant's decision to exercise the Early Termination Notice."

On April 7, 2011, the plaintiffs sent a letter to GF Princeton to put it "on notice of [their] intent to exercise the Early Termination Notice." GF Princeton then sent a letter to the plaintiffs on December 13, 2011, stating that they could not exercise the Early Termination Option until 30 months had passed,

---

2. The commercial office building owned by GF Princeton is subject to a ground lease between GF Princeton and a third party, Herring Land Group.

which had not yet occurred. GF Princeton's letter stated that the plaintiffs improperly terminated the lease and owed GF Princeton \$355,140.80 plus operating costs for the remaining six months on the lease. The plaintiffs filed this action on December 20, 2011, seeking a declaratory judgment regarding the exercise of the Early Termination Option and alleging fraud in the inducement and breach of contract. GF Princeton then filed a motion to dismiss all counts of the complaint for lack of personal jurisdiction under Rule 12(b)(2) of the Federal Rules of Civil Procedure.

GF Princeton is a limited liability company formed under the laws of the state of Delaware. It has seven members. None of these members is a citizen of Pennsylvania or maintains its residence or principal place of business in Pennsylvania. GF Princeton is a single purpose entity that owns and manages the commercial office building in Mercer County, New Jersey involved in this suit. It owns no other real property and conducts no other business. GF Princeton has never maintained an office in Pennsylvania, employed personnel in Pennsylvania, opened or maintained bank accounts in Pennsylvania, registered a telephone number or mailing address in Pennsylvania, or owned or rented property in the Commonwealth.

GF Princeton retained a real estate listing agent, Mercer Oak Realty ("Mercer") on January 31, 2008. GF Princeton and Mercer signed an "Exclusive Listing Agreement" to set out the terms of their relationship. From that time through today,

Mercer has solicited tenants for GF Princeton's building. Pursuant to the listing agreement, Mercer created sales brochures and internet advertisements and mailed these brochures to at least sixty individuals and entities in Pennsylvania. Some of these advertized GF Princeton's property as having an "[e]xcellent commute from Bucks County, PA" and with "SEPTA West Trenton Rail Station nearby." In an email dated April 14, 2008, Mercer's Managing Director advised that the marketing materials should "[s]how Yardley and Newtown and Rt 332 for reference" and "[u]se the SEPTA logo for the train station."

The managing member of GF Princeton, Greyfields Investors, LLC ("Greyfields"), through emails sent by its Senior Managing Director and Principal, Robert Freeman ("Freeman"), instructed Mercer to design the brochures in certain ways, although there is no evidence in the record that he instructed the brochure to be designed specifically referencing the Pennsylvania language. Freeman communicated with potential tenants, including with the plaintiffs, by email. Mercer, for its part, sent periodic Marketing Status Reports to Greyfields. These Marketing Status Reports reveal that Mercer attempted to negotiate leasing agreements for GF Princeton's building with at least four Pennsylvania companies.

One of the sixty individuals to whom Mercer mailed brochures was Doug Newbert ("Newbert") of Radnor, Pennsylvania, the real estate agent of the plaintiffs. Sab Russo ("Russo"), Mercer's Managing Director, also sent an email directly to

Newbert on April 28, 2008, attaching "the SEPTA West Trenton Line schedule," and stating that "there is a full slate of trains from dawn until midnight both ways." Russo also noted that he "thought this would be of interest to Vantage since they mentioned that they employ many University of Pennsylvania students." Russo later emailed Newbert on July 2, 2008 to suggest a "face to face" between Greyfields and the plaintiffs. The email stated this meeting could be "at the building or at Vantage's offices." Later, on or about September 15, 2008, Freeman and Russo traveled to plaintiffs' offices at 110 Terry Drive, Newtown, Pennsylvania. Freeman described this meeting in his deposition as "an introductory, show-the-flag meeting." He further explained, "I think a lot of time was spent discussing our difficulties with the land owner<sup>3</sup> and efforts to get that resolved in order to both stabilize our position and make it possible for Vantage or Pete Murphy to potentially acquire the property if they chose to do so."

### III.

A federal district court sitting in diversity may assert personal jurisdiction over a nonresident of the state in which the court sits only to the extent authorized by the law of that state. Fed. R. Civ. P. 4(k)(1)(A). Pennsylvania law provides for jurisdiction coextensive with that allowed by the Due Process Clause of the Constitution. 42 Pa. Cons. Stat. Ann.

---

3. Freeman is referring to Herring Land Group, the ground lease landlord.

§ 5322(b). Determinations of jurisdiction are generally claim specific. See Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001). Here, all the claims directly relate to the leasing agreement between the plaintiffs and the defendant and thus may be analyzed together.

Under the Due Process clause, we may exercise personal jurisdiction only over defendants who have "certain minimum contacts ... such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal quotation omitted). A parallel inquiry is whether the defendants' contacts with the forum state are such that the defendants "should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

As a threshold issue, we must address whether Mercer's actions may be imputed to GF Princeton for the purposes of establishing personal jurisdiction. The Pennsylvania long arm statute explicitly provides for jurisdiction over a person "who acts directly or by an agent." See 42 Pa. Cons. Stat. Ann. § 5322. "Activities of a party's agent may count toward the minimum contacts necessary to support jurisdiction." Grand Entertainment Group v. Star Media Sales, 988 F.2d 476, 483 (3d Cir. 1993).

GF Princeton contends that Mercer was not acting as its agent but rather as its independent contractor when it made

contacts with Pennsylvania. Indeed, paragraph 12 of the Exclusive Listing Agreement between GF Princeton and Mercer reads:

Broker shall at all times act as an independent contractor hereunder, it being understood and agreed between the parties that no agency (other than as may be expressly provided herein), joint venture, partnership or other relationship is intended and no such arrangement shall be created between Owner and Broker with respect to the Property. Broker shall have no authority to act as a principal or developer or to act on behalf of Owner with respect to the Property, except as expressly herein set forth.

However, paragraph 1 of the Exclusive Listing Agreement reads, "Owner hereby engages Broker as Owner's sole and exclusive agent to represent Owner to find tenants for the Property on terms and conditions acceptable to Owner" (emphasis added).

Because paragraph 12 explicitly states, "other than as may be expressly provided herein," we conclude that paragraph 1 creates an agency relationship between GF Princeton and Mercer as to Mercer's activities in finding tenants for GF Princeton's property. Our conclusion is bolstered by GF Princeton's supervision of Mercer's marketing activities. This supervision occurred when Mercer sent periodic Marketing Status Reports to Greyfields and when Freeman emailed Mercer employees periodically to advise them to make various changes to marketing materials. Mercer was GF Princeton's agent, and therefore Mercer's activities in finding tenants for GF Princeton's property may

count toward the minimum contacts necessary to support jurisdiction over GF Princeton.

IV.

A federal district court may exercise personal jurisdiction over a nonresident defendant based on either general jurisdiction or specific jurisdiction. "General jurisdiction exists when a defendant has maintained systematic and continuous contacts with the forum state." Marten, 499 F.3d at 296 (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-15 nn.8-9 (1984)). There is specific jurisdiction when the claim arises from or relates to conduct purposely directed at the forum state. Id. (citing Hall, 466 U.S. at 414-15 nn.8-9).

General jurisdiction exists when a corporation (1) is incorporated in Pennsylvania or licensed as a foreign corporation in Pennsylvania, (2) consents to jurisdiction in Pennsylvania, or (3) carries on a "continuous and systematic part of its general business" in Pennsylvania. 42 Pa. Cons. Stat. Ann. § 5301(a)(2). GF Princeton is not incorporated or licensed as a foreign corporation in Pennsylvania, and it has not consented to jurisdiction here. Accordingly, the plaintiffs may only establish the existence of general jurisdiction over GF Princeton by showing that a continuous and systematic part of its businesses occurs in Pennsylvania.

The threshold required for a finding of general personal jurisdiction is very high. See Compagnie des Bauxites de Guinea v. Ins. Co. of N.A., 651 F.2d 877, 890 & nn.1-2 (3d



Cir. 1981). Factors to consider in determining whether the defendant has maintained systematic and continuous contacts include any personnel or facilities in the forum state and whether the defendant advertised or solicited business here. BP Chems. Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 262 (3d Cir. 2000).

The plaintiffs contend that GF Princeton maintains systematic and continuous contacts with Pennsylvania because Mercer mailed sixty Pennsylvania individuals marketing brochures and attempted to negotiate leases with five companies in Pennsylvania. The plaintiffs based their argument on Garfield v. Homowack Lodge, Inc., in which the Pennsylvania Supreme Court held that a defendant who placed weekly advertising in a Philadelphia newspaper over a five-year period at a cost of \$2,000 per year, had a toll free number to enable Philadelphia residents to make reservations at its New York hotel, and paid a 10% referral fee to Philadelphia travel agents conducted continuous and substantial business activity in Pennsylvania. 378 A.2d 351 (1977). This case was decided in 1977, prior to most major Supreme Court decisions on personal jurisdiction. As a result, the court did not differentiate between specific and general personal jurisdiction. Accordingly, it is not clear whether it found that these contacts were systematic and continuous, as required for general personal jurisdiction. In our view, GF Princeton's contacts with Pennsylvania do not rise to the level of those in Garfield and in any event are not

sufficient to meet today's high threshold necessary for general personal jurisdiction.

V.

To determine whether specific jurisdiction exists, courts generally engage in a three-part inquiry. D'Jamoos v. Pilatus Aircraft Ltd., 566 F.3d 94, 102-03 (3d Cir. 2009).

First, the defendant must have purposefully directed [its] activities at the forum. Second, the litigation must arise out of or relate to at least one of those activities. And third, if the first two requirements have been met, a court may consider whether the exercise of jurisdiction otherwise comports with fair play and substantial justice.

Id. (internal quotations and citations omitted).

Here, the plaintiffs contend that specific personal jurisdiction exists over GF Princeton because Freeman and Mercer met with the plaintiffs at their headquarters in Newtown, Pennsylvania regarding the potential leasing agreement, because the plaintiffs would not have entered the leasing agreement but for the fact that Mercer initially sent its real estate agent a brochure and because the plaintiffs and GF Princeton communicated periodically by email and telephone regarding the leasing agreement.

We must first determine whether these contacts demonstrate that GF Princeton purposefully directed its activities at Pennsylvania. D'Jamoos, 566 F.3d at 102-03. In O'Connor v. Sandy Lane Hotel Co., a citizen of Pennsylvania sued a Barbados hotel in the Eastern District of Pennsylvania for

injuries suffered while receiving a massage treatment at the hotel. 496 F.3d 312, 315 (3d Cir. 2007). Our Court of Appeals ruled that the federal court in Philadelphia had specific jurisdiction over the defendant. Id. It concluded that the hotel had purposely availed itself of the privilege of conducting activities with Pennsylvania because it mailed seasonal newsletters to the plaintiffs' Pennsylvania home as well as a brochure regarding its spa services and spoke to the plaintiffs on the phone for the purpose of forming an agreement to render spa services. Id. at 318. As in O'Connor, a brochure here was mailed to the plaintiffs for marketing purposes, and a future contract was negotiated by phone - and here also by email - with Pennsylvania residents. Moreover, as discussed above, at least one of Mercer's emails to the plaintiffs specifically touted the property's convenience to Pennsylvania residents, and representatives of Mercer and GF Princeton personally visited the plaintiffs' headquarters in Newtown, Pennsylvania as part of their marketing efforts. Accordingly, GF Princeton purposely directed its activities at Pennsylvania.

We must next address whether this litigation arises out of or relates to at least one of these activities. The plaintiffs contend it does because they would not have entered the leasing agreement but for the fact that Mercer initially sent its real estate agent a brochure, and the purpose of GF Princeton's meeting with the plaintiffs in Pennsylvania was to discuss entering into the leasing agreement. In addition, all

calls and emails between GF Princeton or Mercer and the plaintiffs were regarding the leasing agreement. In O'Connor, our Court of Appeals found that the litigation arose out of the hotel's contacts with Pennsylvania because "through its mailings and phone calls to Pennsylvania, [the hotel] formed a contract for spa services" and the plaintiffs' claims "directly and closely" related to that contract. Id. Here, GF Princeton similarly formed a contract with the plaintiffs through its mailings to Pennsylvania, its emails and phone calls to Pennsylvania, and its meeting in Pennsylvania. Plaintiffs' claims "directly and closely" relate to the leasing agreement. Accordingly, the litigation arose out of GF Princeton's contacts with Pennsylvania.

Our final step in the specific jurisdiction analysis is to determine whether the exercise of jurisdiction otherwise comports with fair play and substantial justice. D'Jamoos, 566 F.3d at 102-03. "The existence of minimum contacts makes jurisdiction presumptively constitutional, and the defendant must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." O'Connor, 496 F.3d at 324 (internal quotations omitted). Factors to consider in this analysis are the burden on the defendant, Pennsylvania's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, and the most efficient resolution of controversies. Id. GF Princeton concedes that the location of this litigation in

either Pennsylvania or New Jersey is unlikely to impose a significant burden on any party, and Pennsylvania and New Jersey both have an interest in seeing the rights of their citizens vindicated. In addition, our exercise of jurisdiction would provide for a more efficient resolution of this controversy. Accordingly, it comports with fair play and substantial justice.

For the above reasons, we conclude that the exercise of personal jurisdiction over the defendant is proper, and we will deny its motion to dismiss the complaint.